



General Assembly

Substitute Bill No. 5561

February Session, 2016

* _____HB05561BA_____031616_____*

AN ACT CONCERNING FAIRNESS IN CONSUMER CONTRACTS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective July 1, 2016*) For the purposes of this
2 section and sections 2 and 3 of this act:

3 (1) "Consumer contract" means a contract prepared by or on behalf
4 of a business or commercial party for use in such party's routine
5 business or commercial transactions with consumers;

6 (2) "Consumer" means an individual who uses, purchases, acquires,
7 attempts to purchase or acquire or receives an offer for any real
8 property, tangible or intangible goods, services or credit for personal,
9 family or household purposes; and

10 (3) "Business or commercial party" means the party on behalf of
11 which a standard form contract is prepared.

12 Sec. 2. (NEW) (*Effective July 1, 2016*) (a) The following contractual
13 terms shall be deemed substantively unconscionable when included in
14 a consumer contract that was not drafted by the consumer:

15 (1) A requirement that resolution of legal claims take place in a
16 venue that is inconvenient to the consumer;

17 (2) A waiver of the consumer's substantive rights to assert claims or
18 seek remedies provided by state or federal law;

19 (3) A waiver of the consumer's right to seek punitive, minimum,
20 multiple or other statutory damages as provided by law or attorney's
21 fees if authorized by statute or common law;

22 (4) A requirement that any action brought by the consumer with
23 regard to the contract be initiated within a time period that is shorter
24 than the applicable statute of limitations;

25 (5) A requirement that the consumer pay fees and costs to bring a
26 legal claim that substantially exceed the fees and costs that would be
27 required to bring a claim in a state court or that makes no provision for
28 the waiver of fees and costs for a consumer who cannot afford such
29 fees and costs; and

30 (6) A failure to permit a party to present evidence in person or to
31 ensure that the consumer can obtain, prior to a hearing, any
32 information that is material to the issue to be determined at such
33 hearing.

34 (b) In determining whether the terms described in subsection (a) of
35 this section are unenforceable, a court shall consider the principles that
36 normally guide courts in the state in determining whether
37 unconscionable terms are enforceable. The common law and the
38 Uniform Commercial Code shall also guide the court in determining
39 the enforceability of unfair terms not specifically identified in
40 subsection (a) of this section.

41 (c) In determining whether the rebuttable presumption that a term
42 in a consumer contract found to be unconscionable is unseverable from
43 the provision in which it is situated has been rebutted, the court may
44 consider the general principles of contract law regarding the
45 severability of unenforceable terms.

46 (d) It shall be an unfair and deceptive practice in violation of the

47 Connecticut Unfair Trade Practices Act, sections 42-110a to 42-110q,
48 inclusive, of the general statutes, to include any of the presumptively
49 unconscionable terms identified in subsection (a) of this section in a
50 consumer contract that was drafted by a party other than the
51 consumer. A party who prevails on a claim under this section shall be
52 entitled to all damages and remedies available pursuant to the
53 Connecticut Unfair Trade Practices Act.

54 Sec. 3. (NEW) (*Effective July 1, 2016*) (a) A person harmed by a
55 violation of the Connecticut Unfair Trade Practices Act may initiate on
56 behalf of the state an action to recover civil penalties on behalf of the
57 state and to seek injunctive, declaratory or other equitable relief that
58 the state would itself be entitled to seek.

59 (b) In initiating an action under this section, a person may allege
60 multiple violations that have affected different consumers, provided
61 such violations are of a sufficiently similar kind such that they may be
62 efficiently managed in a single action.

63 (c) A court may award a person who initiates an action under this
64 section an incentive award of up to twenty-five per cent of the total
65 monetary recovery if such person pursues the action to final judgment
66 or settlement as the prevailing party, or up to ten per cent of the total
67 monetary recovery if the state intervenes in the action and pursues
68 such action to final judgment or settlement as the prevailing party.

69 (1) A person initiating an action under this section shall serve a copy
70 of the complaint and a letter describing the action on the Attorney
71 General, at which point the action shall be stayed for thirty days. The
72 state may intervene in the action and proceed with any and all claims
73 in the action: (A) As of right within the thirty-day stay; or (B) for good
74 cause, as determined by the court, after the expiration of the thirty-day
75 stay.

76 (2) The court may stay such discovery for a period of not more than
77 sixty days upon a showing by the state that certain actions of discovery

78 by the person initiating the action would interfere with the state's
79 investigation or prosecution of a criminal or civil matter arising out of
80 the same facts, whether or not the state proceeds with the action. Such
81 a showing shall be conducted in camera as necessary. The court may
82 extend the sixty-day period upon a further showing in camera that the
83 state has pursued the criminal or civil investigation or proceedings
84 with reasonable diligence and any proposed discovery in the action
85 will interfere with the ongoing criminal or civil investigation or
86 proceedings.

87 (3) No action may be brought by a private party acting pursuant to
88 this section for any violations previously alleged as the basis for an
89 action brought by the state or by another private party under this
90 section, and no action may be brought by the state for any violations
91 previously alleged as the basis for an action brought by a private party
92 pursuant to this section. Furthermore, when a person initiates an
93 action under this section, no person other than the state may intervene
94 or bring a related action under this section based on the facts
95 underlying the pending action.

96 (4) The court in which the action brought under this section is filed
97 shall review and approve any proposed settlement of such action to
98 ensure that the settlement provisions are reasonable in light of state
99 law. The court shall also ensure that any incentive fees and attorney
100 fees or costs included in a settlement are reasonable and that the
101 person initiating such action does not recover, as an incentive
102 payment, more than twenty-five per cent of the recovery remitted to
103 the state under the proposed settlement. The proposed settlement shall
104 be submitted to the Attorney General at the same time that it is
105 submitted to the court. If the Attorney General opposes the settlement
106 and expresses such opposition by filing a motion with the court, the
107 court shall decline approval of the settlement.

108 (5) The state may dismiss any action in which it decides to intervene
109 under subdivision (1) of this subsection notwithstanding the objections
110 of the person who initiated the action.

111 (6) The state may settle any action in which it decides to intervene
112 under subdivision (1) of this subsection notwithstanding the objections
113 of the person who initiated the action.

114 (7) An action initiated by a private person under this section shall
115 not bar such person or any other individual from filing a private action
116 based on the same nucleus of operative facts, nor shall a prior private
117 action based on the same nucleus of operative facts bar an action under
118 this section.

119 (8) Actions under this section are prosecuted on behalf of the state,
120 not on behalf of an individual, and mandatory arbitration agreements
121 between private parties do not apply to actions under this section. No
122 contract shall waive or limit a private party's right to bring suit under
123 this section by preventing such party from being able to bring an
124 action in a public forum or an action alleging multiple violations
125 committed against multiple consumers pursuant to subsection (b) of
126 this section.

127 (9) If any provision of this section or the application thereof to any
128 person or circumstance is held invalid, such invalidity shall not affect
129 other provisions or applications of this section that may be given effect
130 without such invalid provision or application, and, to this end, the
131 provisions of this section are declared to be severable.

132 (d) Unless state law provides a greater amount as the civil penalty
133 recoverable by the state for violations of the Connecticut Unfair Trade
134 Practices Act, a person who commits a violation of such act shall be
135 subject to a civil penalty not to exceed five thousand dollars per
136 violation.

This act shall take effect as follows and shall amend the following sections:		
Section 1	July 1, 2016	New section
Sec. 2	July 1, 2016	New section
Sec. 3	July 1, 2016	New section

Statement of Legislative Commissioners:

In Section 2(a)(1), "an inconvenient venue" was changed to "a venue that is inconvenient to the consumer" for clarity; in Section 3(b), "those" was changed to "such" for consistency with standard drafting conventions; in Section 3(c), ",including after settlement of the action in accordance with subdivision (4) of this subsection" was deleted and, in the last line, "or settlement" was inserted before "as the prevailing party," to eliminate redundant language; in Section 3(c)(2), the clauses of the first sentence were reordered and "as necessary" was moved to after "in camera" for consistency with standard drafting conventions; in Section 3(c)(3), "pursuant to" was changed to "under" for consistency; in Section 3(c)(4), "brought under this section" was moved to after "action" for consistency with other provisions of the section, "an" was replaced with "such," and "must" was replaced with "shall" for consistency with standard drafting conventions; and in Section 3(c)(8), "by waiving such party's right to bring such an action in a public forum or" was deleted and "an action in a public forum or" was inserted after "bring" for clarity.

BA *Joint Favorable Subst.*